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UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Lambert, et al.

Confirmation No.: 4732

Application No.: 10/808,358

Examiner: Pape, Zachary

Filing Date: March 25, 2004

Group Art Unit: 2835

Title: Reconfigurable Electronic Device Chassis And Interchangeable Access Panels For Use In Same

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TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notification of Non-Compliant Appeal Brief mailed on September 5, 2006

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) was previously paid on August 14, 2006.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

() (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

() one month	\$120.00
() two months	\$450.00
() three months	\$1020.00
() four months	\$1590.00

() The extension fee has already been filled in this application.

() (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

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Respectfully submitted,

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PATENT

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In the Matter of the	
Application of:	Lambert, et al.
Serial No.:	10/808,358
Filed:	March 25, 2004
Entitled:	RECONFIGURABLE ELECTRONIC DEVICE CHASSIS AND INTERCHANGEABLE ACCESS PANELS FOR USE IN SAME
Docket No.:	200312909-1

Group Art Unit: 2835
Examiner: Pape Zachary

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37



Application No. 10/808,358
Attny Docket: 200312909-1

Appeal Brief

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Appeal Brief

I. REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, L.P. of Houston, Texas. Hewlett-Packard Development Company, L.P. derives its rights in this application by virtue of an assignment of the application to Hewlett-Packard Development Company, L.P.

II. RELATED APPEALS AND INTERFERENCES

There are currently no appeals or interferences known to the Appellants, the Appellants' legal representative, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-7 and 9-15 are currently pending. Claims 8 and 16-25 were previously cancelled. Claims 1-7 and 9-15 have been finally rejected and are the subject of this appeal.

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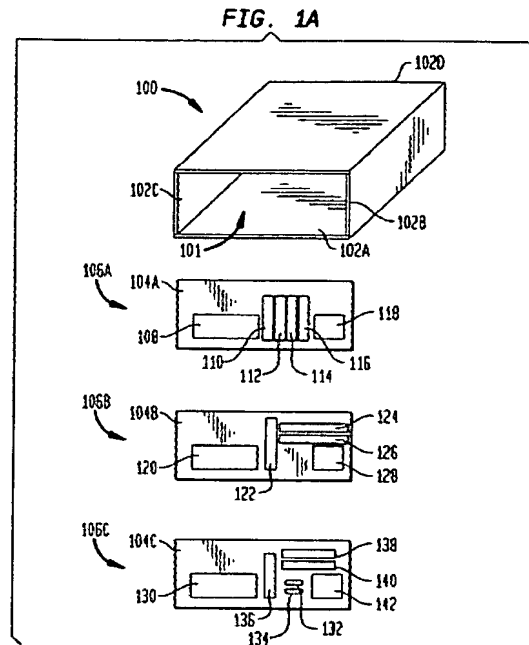
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IV. STATUS OF AMENDMENTS

All Amendments have been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a chassis for an electronic device, comprising a plurality of exterior walls 102 joined to each other to form a partially-assembled chassis 100, wherein at least one exterior wall is entirely vacated 101. (*See*, Specification pg. 3, para. 13; pg. 4, para. 15.) An embodiment of this aspect of the present invention is shown in Applicants' FIG. 1A, reproduced to the right. A plurality of substantially planar interchangeable access panels 104 are each removably attachable to the partially-assembled chassis 100 so as to occupy at least a portion of the exterior wall vacancy 101. (*See*, Specification pg. 4, para. 16; FIG. 1A.) Also each access panel 104 has a unique configuration 106 of one or more apertures 120-142 each providing operational access to components housed in the chassis. (*See*, Specification pgs. 4-5, para. 17). A completely-assembled chassis 150 is attained by removably attaching any of the plurality of interchangeable access panels 104 to the partially-assembled chassis 100. (*See*, Specification pg. 5, para. 18.)



Disclosed embodiments of a partially-assembled chassis of claim 1 are shown in FIGS. 1A (100), 2A (200) and 3A (300). Disclosed embodiments of planar interchangeable access panels of claim 1 are shown in FIGS. 1A (104A, 104B, 104C), 2A (202), 2B1 (202A)

2B2 (202B) 2B3 (202C), 3A (302), 3B1 (302A), and 3B2. As illustrated in these exemplary embodiments, the partially assembled chassis has one wall that is *entirely* vacated and the planar interchangeable access panel occupies a *portion* of that vacancy. The interchangeable access panels are removably attached using a variety of interlocking mechanisms. (*See*, Specification, pg. 4, para. 16.)

Disclosed embodiments of “each access panel has a unique configuration of one or more apertures” of claim 1 are described any number of aperture configurations. (*See*, Specification, pg. 5, para. 17.) Further details of the types and configurations are also shown in FIGS. 2B1-2B3 and FIGS. 3B1 & 3B2. (*See*, Specification, pgs. 8-9, paras. 29-33; pgs. 11-12, paras. 39-42.)

Independent claim 6 is directed toward the interchangeable access panel 104 itself. (*See*, Specification, pg. 8, para. 28.) Each such access panel 104 is substantially planar, and removably attachable to a partially-assembled chassis 100 to occupy at least a portion of an entirely vacant exterior wall 101. Also each access panel comprises a configuration of at least one aperture 120-142 each constructed and arranged to provide operational access to components mounted in the chassis 100.

Disclosed embodiments of the claimed invention are directed towards interchangeable access panels that allow the chassis to achieve a configuration of the operational access apparatus of the electronics within the chassis. (*See*, Specification, pg. 3, para. 13.) Each interchangeable access panel may have different configurations which allow improved manufacturing and assembly. (*See*, Specification, pgs. 5-6, para. 20.)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether the Examiner improperly rejected independent claims 1 and 6, and dependent claims 2-5, 7 and 9-15 under 35 U.S.C. §103(a) as being unpatentable over US Patent No. 5,564,930 to Yu (Yu '930) in view of US Patent No. 6,059,386 to Yu (Yu '386) when there is no suggestion or motivation in the applied art to combine the teachings of Yu '930 and Yu '386.

B. Whether the Examiner improperly rejected under 35 U.S.C. §103(a) independent claims 1 and 6, and dependent claims 2-5, 7 and 9-15 under 35 U.S.C. §103(a) as being unpatentable over US Patent No. 5,564,930 to Yu (Yu '930) in view of US Patent No. 6,059,386 to Yu (Yu '386) when neither Yu '930 nor Yu '386 disclose an interchangeable access panel as defined in claim 1, either alone or in combination.

VII. ARGUMENT

- A. **The Examiner improperly rejected independent claims 1 and 6, and dependent claims 2-5, 7, and 9-15 as being unpatentable over Yu '930 in view of Yu '386 because there is no suggestion or motivation in the applied art to combine the teachings of Yu '930 and Yu '386.**

1. Independent claims 1 and 6 and dependent claims 2-5, 7 and 9-15, have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,564,930 to Yu (hereinafter, "Yu '930") in view of U.S. Patent No. 6,059,386 to Yu (hereinafter, "Yu '386"). Appellants respectfully request that these rejections be reversed for the reasons presented herein.

2. For a rejection under Section 103(a) to be proper it must comply with the statutory provisions and controlling case law. The text of Section 103(a) was stated in the Final Office Action. (*See*, Final Office Action, pg. 2.) The US Supreme Court outlined the four factual inquiries in considering and determining of obviousness under Section 103(a), in *Graham v. John Deere*, as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

(*See*, 383 U.S. 1, 17-18 (1966).)

3. The MPEP informs that it is Office policy to following *Graham*. (*See*, MPEP § 2141.)¹ In determining obviousness, the legal concept of *prima facie* obviousness is a well established procedural tool of examination to allocate the burden between the examiner and applicant. (*See*, *In re Fielder*, 471 F.2d 640, 642 (CCPA 1973).) Once *prima facie* obviousness is established by the examiner, the burden to rebut the position with objective

¹ Appellants note that the Examiner has to date not referred to the standards in *Graham* or applied the factual inquiries outlined in *Graham*.

evidence of no obviousness shifts to the applicant. (*See, Id.* at 642-43.) When a *prime facie* case of obviousness depends on two references several cases have indicated that there must be some teaching, suggestion or motivation to combine the references. (*See, In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (“To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness.”).) Substantial evidential support for the motivation to combine must be shown in the prior art suggesting a combination of references. (*See, In re Lee*, 277 F.3d 1338, 1343-44 (Fed. Cir. 2002) (“This factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority.”); *see also, In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000) (“[P]articular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.”).) In the absence of a proper *prima facie* case of obviousness, the applicant is entitled to a patent. (*See, In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).)

4. The Examiner has failed to carry this initial burden to establish a *prima facie* case of obviousness based on the existing factual record. The Examiner asserts that Yu ‘930 teaches all limitations of previously presented in independent claims 1 and 6 other than the feature of “at least one exterior wall is entirely vacated.” (*See*, Final Office Action, pg. 3.) The Examiner cites Yu ‘386 for teaching “a computer chassis for an electronic device comprising a vacated exterior wall (20) which can be placed in the vacated portion to complete the full assembly of the chassis.” (*See*, Final Office Action, pg. 3.) The Examiner attempts to clarify the use of teachings of Yu ‘386 by stating that “the examiner was using Yu ‘386 only to teach vacating an entire wall of a chassis as claimed.” (*See*, Final Office Action, pg. 7; emphasis in

original; *see also*, Final Office Action, pg. 7, “examiner is merely using the Yu ‘386 references to teach ‘at least one exterior wall... [is] entirely vacated.’”).)

5. To support the motivation to combine these two references, the Examiner asserts that it “would be obvious to one of ordinary skill in the art at the time of the invention was made to modify the interchangeable access panel of Yu ‘930 to include the entire rear panel as taught by Yu ‘386 to provide *better access* to the components of the computer system.” (*See*, Final Office Action, pg. 4; emphasis added.) The Examiner relies on column 1, lines 40-42 of Yu ‘386, stating that “having a removable panel as taught by Yu ‘386 provides for *better access* to the components compared to the partial opening of Yu ‘930.” (*See*, Final Office Action, pg. 4; emphasis added.)

6. The Examiner emphasizes that “the Yu ‘386 reference teaches the motivation listed by the examiner” by citing the following passage of Yu ‘386: “The present invention provides a computer case, which facilitates the replacement, update, and maintenance of computer equipment.” (*See*, Final Office Action, pgs. 6-7, citing Yu ‘386, col. 1, lns. 1-40.) In addition, in the Office Action mailed November 23, 2005, the Examiner claims to have addressed the previously lack of motivation by stating that “the examiner has explicitly cited motivation in the second Yu reference [Yu ‘386].” (*See*, Office Action, pg. 4.) In summary, it is the Examiner’s position that the motivation to combine Yu ‘930 in view of Yu ‘386 comes from the alleged teachings that Yu ‘386 provides improved access to the components in the computer case.

**1. The Examiner Failed to Provide any Evidence to Support
a Proper Motivation to Combine Rejection**

7. The Examiner has failed to provide substantial evidence for the assertion that one of ordinary skill, without having the benefit of Applicants’ novel teachings before them, would

have been motivated to combine the teachings of the two references to support the rejection of independent claims 1 and 6 and, as such, has thus failed to establish a *prima facie* case of obviousness. The rejection of independent claims 1 and 6 are therefore improper and should be reversed.

8. The advantage articulated by the Examiner that Yu '386 provides "better access" is nothing more than the Examiner's subjective observation and is not based on the record of this application. As stated by the Federal Circuit in *In re Lee* a factual inquiry cannot be resolved by a "subjective belief and unknown authority." (*See, In re Lee*, 277 F.3d at 1344.) Yu '386 neither teaches nor suggests providing improved access; rather Yu '386 teaches nothing more than a computer case that facilitates the replacement, update, and maintenance of computer equipment as asserted by the Examiner. (*See*, Final Office Action, pgs 6-7.) Therefore, the Examiner's assertion that the computer case of Yu '386 would improve access to the case of Yu '930 is a subjective belief that fails to meet the substantial evidence requirement to support a *prima facie* obviousness rejection.

2. Secondary Reference Access not the same

9. Furthermore, the advantage articulated by the Examiner that would result from combining the two references is a statement derived from Yu'386 about the configuration disclosed in Yu '386. There is no teaching or suggestion in the art of record that such an advantage would be attained by combining the teachings of Yu '386 with Yu '930. In fact, Yu '930 and Yu '386 address different problems and, as such; Yu '930 does not seek the same type of access that Yu '386 provides. Thus, it is inappropriate for the Examiner to argue that Yu '386 provides better access to support a motivation to combine, when Yu '930 does not seek nor suggest the type of access afforded by Yu '386. The modification of Yu '930 using Yu '386 by the Examiner in the Final Office Action is arranging a collection of

parts, none of which is desired by the prior art of record. The Federal Circuit has held in *In Re Mills* that there must be some desirability to make the modification, and the mere fact that the reference can be combined does not suggest a proper motivation to combine. (*See*, 916 F.2d 680, 682 (Fed. Cir. 1990).) Turning to Yu '930, Yu '930 teaches an interchangeable panel (50, 90) that is placed in a window (70) in the rear wall (22) as shown in FIG. 3. (*See*, Yu '930, col. 3, lns. 54-60.) The interchangeable panel (50, 90) is provided with several slots (76) for access to the accessory cards in the case (12). (*See*, Yu '930, col. 4, lns 7-20.) This access of Yu '930 allows a user to access the internal cards while the panel is attached in a window on the rear of the case. In contrast, Yu '386 provides access to replace, update and provide maintenance for the components when the front panel (22) is removed. (*See*, Yu '386, col. 2, lns 14-27; lns. 43-52.) Nothing in Yu '930 suggests that the type of access provided by Yu '386 is desirable or possible. Therefore, the Examiner's use of Yu '386 to provide the motivation to combine Yu '930 in view of Yu '386 because of better access is not germane when Yu '930 does not provide any reason for such access.

10. Appellants noted that in the Final Office Action that the Examiner appears to have misunderstood the previous arguments. On page 7, the Final Office Action recites:

With respect to the applicant's remarks to claims 1 and 6 that, 'Yu '930 [sic] and Yu '386 are directed to different problems and describe different structures which are not combinable components", the test for obviousness is not whether the features of the a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in art. *See In Re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981) (*See*, Final Office Action, pg. 7.)

Appellants agree with the principles summarized in *In re Keller*, and do not seek to establish a new test of obviousness. Instead Appellants, in the previous argument as well as these arguments on appeal, seek to show that because of the differences between Yu '930 and Yu '386 the advantage obtained by one, namely Yu '386, negates finding that this same advantage exists or is desired in Yu '930. Thus, if the advantage purported by the Examiner in Yu '386 is negated in Yu '930, then there are no further grounds for combining such references.

11. The Examiner's assertions of motivation to combine based on advantages wholly present in only the secondary reference is an improper use of hindsight. The Federal Circuit has repeatedly stated that the use of hindsight must be guarded against by having the Examiner provide substantial evidence to support the motivation. (*See, e.g., In re Rouffet*, 149 F.3d 1350 (Fed. Cir. 1998); *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999).) In this situation, the Examiner is using an advantage seized only from the secondary reference, Yu '930, to teach a missing element of the primary reference, Yu '386, to support a *prima facie* case of obviousness. There is no objective, substantial evidence provided by the Examiner on the record which shows a motivation to combine Yu '930 in view of Yu '386. Instead, the Examiner claims to find all the elements of Applicants' claimed invention in the two applied references and improperly combines the references without relying on objective evidence. Absent objective evidence, and based on Federal Circuit precedent, it can be reasonably assumed the Examiner selected the references with the assistance of hindsight. (*See, In re Rouffet*, 149 F.3d 1350, 1358 (Fed. Cir. 1998).) This selection using hindsight is further highlighted by the lack of a motivation in Yu '930 to use anything other than a panel that fits within a window on a rear wall. In asserting that the prior art "suggested" the claimed subject matter, an Examiner may not "use the claimed invention as an instruction manual or

'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." (*See, In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992).) The Federal Circuit has further stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (*See, Id.*) Here, the Examiner has selected features from different references in an attempt to construct a *prima facie* obviousness rejection. This is impermissible hindsight reconstruction used to reject independent claim 1.

12. The only conclusion that can be drawn, based on the record of this application, is that the suggestion forming the basis for the Examiner's otherwise factually unsupported conclusion must have come from Appellants' own novel disclosure; that is, they are based on impermissible hindsight. This failure of the Examiner's reasoning in attempting to make out a *prima facie* obviousness case is sufficient reason alone to reverse the Section 103 rejection of independent claims 1 and 6, and dependent claims 2-5, 7, and 9-15.

B. WHETHER THE EXAMINER IMPROPERLY REJECTED INDEPENDENT CLAIMS 1 AND 6, AND DEPENDENT CLAIMS 2-5, 7, AND 9-15 AS BEING UNPATENTABLE OVER US PATENT NO. 5,564,930 TO YU (YU '930) IN VIEW OF US PATENT NO. 6,059,386 TO YU (YU '386) WHEN NEITHER YU '930 NOR YU '386 DISCLOSE AN INTERCHANGEABLE ACCESS PANEL AS DEFINED IN CLAIM 1, EITHER ALONE OR IN COMBINATION.

13. Independent claims 1 and 6 and dependent claims 2-5, 7 and 9-15, have been rejected under 35 U.S.C. § 103(a) as being unpatentable by U.S. Patent No. 5,564,930 to Yu (hereinafter, "Yu '930") in view of U.S. Patent No. 6,059,386 to Yu (hereinafter, "Yu '386"). Appellants respectfully request that these rejections be reconsidered, and that they be withdrawn in view of the present appeal.

14. The Examiner asserts that Yu '930 teaches all limitations of previously presented

claim 1, except for the feature of “at least one exterior wall is entirely vacated.” (*See*, Final Office Action, pg. 3.) The Examiner cites Yu ‘386 for teaching “a computer chassis for an electronic device comprising a vacated exterior wall (20) which can be placed in the vacated portion to complete the full assembly of the chassis.” (*See*, Final Office Action, pg. 3.) The Examiner attempts to clarify the use of teachings of Yu ‘386 by stating that “the examiner was using Yu ‘386 only to teach vacating an entire wall of a chassis as claimed.” (*See*, Final Office Action, page 7 (also the “examiner is merely using the Yu ‘386 references to teach ‘at least one exterior wall... [is] entirely vacated’”).)).

15. Independent claims 1 and 6 recite the feature of a “plurality of substantially planar interchangeable access panels each removably attachable to the partially-assembled chassis so as to occupy *at least a portion* of the exterior wall vacancy.” (*See*, Appellant’s claim 1 in Claim Appendix; emphasis added.) Yu ‘930 teaches an interchangeable panel (50, 90) that is placed in a window (70) in the rear wall (22) as shown in FIGs. 3 and 9. (*See*, Yu ‘930, col. 3, lns. 54-60.) In every embodiment described in Yu ‘930 the panel occupies the entire window. Likewise in every embodiment described in Yu ‘386 the front panel (22), which is not an interchangeable panel, is shown occupying the entire vacated front portion. (*See*, Yu ‘386, FIG. 3). Neither Yu ‘930 or Yu ‘386 shows an interchangeable panel which occupies a portion of the exterior wall vacancy as claimed. Instead, Yu ‘930 and Yu ‘386 each show panels which occupy the *entire* window vacancy in Yu ‘930 and the entire wall vacancy in Yu ‘386.

16. For the reasons noted above, Applicant submits that the pending claims define patentable subject matter. Accordingly, Applicant request that the Examiner's rejection of these claims be reversed and that the pending application be passed to issue.

Respectfully submitted,

Dated: September 15, 2006

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CLAIMS APPENDIX

1. A chassis for an electronic device, comprising:

a plurality of exterior walls joined to each other to form a partially-assembled chassis, wherein at least one exterior wall is entirely vacated; and

a plurality of substantially planar interchangeable access panels each removably attachable to the partially-assembled chassis so as to occupy at least a portion of the exterior wall vacancy, wherein each such access panel has a unique configuration of one or more apertures each providing operational access to components housed in the chassis,

whereby a completely-assembled chassis is attained by removably attaching any of the plurality of interchangeable access panels to the partially-assembled chassis

2. The chassis of claim 1, further comprising:

an interlocking system comprising at least one interlocking mechanism operably positioned at one or more locations in one or more of the partially-assembled chassis and each of the plurality of interchangeable access panels, wherein each interlocking mechanism detachably secures at least a portion of a selected interchangeable access panel to the partially-assembled chassis.

3. The chassis of claim 1, wherein each of the configurations of one or more operational access apertures comprises one or more of the group comprising:

at least one port aperture;

at least one expansion slot aperture;

at least one power supply aperture; and

at least one ventilation apertures.

4. The chassis of claim 1, wherein the electronic device is a server.
5. The chassis of claim 1, wherein the electronic device is a personal computer.
6. A plurality of interchangeable access panels, wherein each access panel is substantially planar, wherein each access panel is removably attachable to a partially-assembled chassis to occupy at least a portion of an entirely vacant exterior wall, and wherein each access panel comprises a configuration of at least one aperture each constructed and arranged to provide operational access to components mounted in the chassis.
7. The access panels of claim 6, wherein each access panel further comprises:

an interlocking system comprising at least one interlocking mechanism operably positioned at one or more locations in either or both the partially-assembled chassis and each of the plurality of interchangeable access panels, wherein each interlocking mechanism detachably secures a portion of a selected interchangeable access panel to the partially-assembled chassis.
9. The access panels of claim 6, wherein each configuration of at least one operational access aperture comprises a combination of one or more characteristics of aperture size, dimensions, quantity, orientation, relative position, location, and type of supported operational access.
10. The access panels of claim 6, wherein the configuration of one or more operational access apertures of at least one of the interchangeable each access panels comprises:

at least one port aperture.

11. The access panels of claim 6, wherein the configuration of one or more operational access apertures of at least one of the interchangeable each access panels comprises:

at least one expansion slot aperture.

12. The access panels of claim 6, wherein the configuration of one or more operational access apertures of at least one of the interchangeable each access panels comprises:

at least one power supply aperture.

13. The access panels of claim 6, wherein the configuration of one or more operational access apertures of at least one of the interchangeable each access panels comprises:

at least one ventilation aperture.

14. The access panels of claim 6, wherein the electronic device is a server.

15. The access panels of claim 6, wherein the electronic device is a personal computer.

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EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None